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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-365

AILEEN LOVE, WARDEN, et al

PETITIONERS

VS.

WILLIAM EARL STACY

RESPONDENT

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

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OCTOBER TERM, 1982

NO. 82-365

AILEEN LOVE, WARDEN, et al

Petitioner,

VS.

WILLIAM EARL STACY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions below are correctly set out in the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions stated in the petition are correctly set forth.

QUESTIONS PRESENTED

1. Whether this Court's decision in Jackson v. Virginia, 443 US 307, 99 S.Ct. 2781 (1979) was correctly applied by the Court below in this case.

2. Whether there are sufficient reasons under the authorities of this Court to warrant the granting of the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The statement of the case in the petition is not incorrect except that a more complete statement of the facts is set forth in the decisions of the Court of Appeals and the District Court. Stacy v. Love, 679 F.2d 1209, 1210-1212 (6th Cir. 1982); Stacy v. Love, 528 F.Supp. 38, 39-53 (M.D. Tenn 1981).

SUMMARY OF ARGUMENT

The respondent was tried for murder in State Court. His defense was insanity. Under Tennessee law if the defendant raises a reasonable doubt as to his sanity, the burden shifts to the State to prove the defendant sane beyond a reasonable doubt. The rule of insanity in Tennessee states that "a person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law."

In this case the State does not even contest that the burden of proof shifted to the State as the respondent did raise a reasonable doubt at his trial as to his sanity on the day of the crime. Thus in order to convict, the State would have to prove the defendant sane beyond a reasonable doubt. Graham v. State,

547 SW2d 531, 544 (Tenn 1977). The State, however, says that it did produce enough evidence to convince "any rational trier of fact" that the defendant could appreciate the wrongfulness of his conduct and had the capacity to conform his conduct to the requirements of the law. The respondent admits that the State did produce some evidence to indicate that the defendant could appreciate the criminality (wrongfulness) of his act, but as the District Court stated, on to the issue of his capacity to conform his conduct to the law; "the State's rebuttal was not insufficient; it was non-existent." Stacy v. Love, 528 F.Supp 38, 61 (M.D. Tenn) 1981). The Court of Appeals stated it another way. "The record is simply devoid of any evidence that Stacy had the ability to conform his conduct to the requirements of the law." Stacy v. Love, 679 F.2d 1209, 1214 (6th Cir. 1982).[1]

Both federal courts below carried out their duty under Jackson v. Virginia, 443 US 307, 99 S.Ct. 2781 (1979) and found that after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. The petition for writ of certiorari should be denied.

---

1. Both decisions below comply with the mandates of this Court in Sumner v. Mata, ___ US_____, 101 S.Ct. 764 (1981).

ARGUMENT

This case involves application of the principles set forth in Jackson v. Virginia, 443 US 307 99 S.Ct. 2781 (1979). The District Court and the Court of Appeals both decided that the State of Tennessee had not sustained its burden of proof. The State's response to this is to say that the jury "might conclude" from the evidence that the State had proved its case beyond a reasonable doubt. However, what the jury "might conclude" or what is "reasonable speculation" is much different than whether "a rational jury find it to be proof beyond a reasonable doubt." See opinion of Justice Stevens respecting the denial of certiorari, Anderson v. Fuller, ___ US ___, 102 S.Ct. 1734 (1982) citing Fuller v. Anderson, 662 F.2d 420, 423 (6th Cir. 1981).

Under the argument made by the Petitioner in this case there would never have been an occasion for application of Jackson v. Virginia. As long as a jury could "speculate" about what might have or could have happened, then a finding could almost never be made that there was insufficient proof to sustain the State's case and the rule set forth in Jackson would be meaningless.[2] The State contends that the jury's conclusions are final, but that is just not the holding of Jackson. The Court of Appeals properly held in this case that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. If the holding Jackson is properly applied, then this petition should be denied.

---

2. The State is in reality arguing that the standard in Thompson v. Louisville, 362 US 199, 80 S.Ct. 624 (1960) should be applied Of course, Thompson was overruled by Jackson.

As stated in Jackson:

> The Winship doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standard must also require that the fact finder will rationally apply the standard to the facts in evidence. A "reasonable doubt," at a minimum is one based upon "reason." Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find beyond a reasonable doubt, . . .

Jackson v. Virginia, supra, at 317.

This Court did recognize that State appellate review may correct many of the situations in which a jury has erred in applying the reasonable doubt standard, but "the same could also be said of the vast majority of other federal constitutional rights that may be implicated in a State criminal trial. It is the occasional abuse that the federal writ of habeas corpus stands ready to correct." Jackson v. Virginia, supra at 322

The State, doubting the validity of its argument to convince this Court to reverse or modify Jackson, next tries an end run around the Jackson decision. The State concedes that when the burden to prove sanity shifts to the State sanity becomes an essential element of the crime. (Petition at page 12).[3] However, the State then argues that since Tennessee did not constitutionally have to shift the burden to the State, Jackson should not be applied. In other words, since Tennessee could have left the full burden of the proof of insanity on the defendant, insanity is not an element of the crime for the purposes of Jackson. The State cites Engle v. Isaac for the proposition that this Court has rejected the notion "that whenever a State requires the prosecution to prove a particular circumstance beyond a reasonable doubt, it has invariably defined that circumstance as an element of the crime."

---

3. "Thus under these circumstances, sanity becomes an element of the crime." Stacy v. Love, 679 F.2d at 1213.

Engle v. Isaac, ___ US ___, 102 S.Ct. 1558, 1567 (1982).

The State should read on in Engle for Justice O'Connor explores the subject further and discusses the need for the State to prove purposeful and knowing behavior as an element of a crime charged. Although Justice O'Connor does not find it necessary to resolve the issue, she seems to indicate that due process commands the prosecution to prove facts which go to the issue of "purposeful conduct" when the State's burden of proof rules throw that burden upon the State. Engle v. Isaac, supra, at 1568.

In this case the petitioners could hardly argue that intent is not a necessary element of murder and that the sanity or insanity of the respondent does not bear directly on the element of intent. The federal courts have the same rule as Tennessee regarding the shifting of the burden to the government once the defendant makes a prima facie showing of insanity. See Davis v. United States, 160 US 469, 16 S.Ct. 353 (1895).[4] Mr. Justice Brennan made this following observation regarding the insanity defense while dissenting from a summary denial of an appeal in Rivera v. Delaware, 429 US 877, 97 S.Ct. 226 (1976). It in true that:

> at least in the context of federal criminal procedure, that the accused's sanity is an ingredient of mens rea an element of the crime which the prosecution must prove beyond a reasonable doubt (emphasis added).

Rivera v. Delaware, supra, at 879.

The Sixth Circuit held that under the circumstances of this case "sanity becomes an element of the crime." Stacy v. Love, 679 F.2d at 1209 (6th Circuit)(emphasis added).

---

4. Davis v. United States is cited by the Tennessee Courts as authority for the Tennessee rule on shifting the burden to the State in insanity defense cases. Covey v. State, 504 S.W.2d 387, 391 (Tenn.Crim.App. 1973). Therefore, Mr. Justice Brennan's comment can also be considered a comment on Tennessee law.

The argument of the State that Jackson does not apply to the circumstances of this case is just without merit. Intent or mens rea is necessarily a part of the crime of murder, thus the sanity of the defendant and the essential elements of the crime are locked together when there is a question as to the defendant's mental state at the time of the crime. To say that sanity is not an element is to say that the State does not have to prove intent or mens rea. Certainly that is not the state of the law.

The petition should further be denied as the petitioner has stated no reason under Rule 17(1)(a), (b) or (c) of the Rules of the Supreme Court of the United States why this petition should be granted. The petitioner simply seeks a review on the facts. As recently stated by Mr. Justice Stevens:

> In my judgment it would not be an appropriate use of this Court's scarce resources to grant certiorari and review every record in which a federal court makes a conscientious effort to apply the dictates of Jackson v. Virginia.

Anderson v. Fuller, ___ US ___, 102 S.Ct. 1734, 1735 (1982).

It is generally the rule in this Court that certiorari is not granted "to review evidence and discuss specific facts." United States v. Johnston, 268 US 220, 227 (1925). See generally Stern and Gressman, Supreme Court Practice, Sec. 4.14 (5th Ed. 1978).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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RESPONDENT

MOTION OF RESPONDENT TO PROCEED
IN FORMA PAUPERIS

Comes the respondent, William Earl Stacy and moves this Court pursuant to Rule 46 of the United States Supreme Court Rules for leave to proceed in this Court in forma pauperis. The undersigned counsel represented the respondent in the United States Court of Appeals for the Sixth Circuit pursuant to appointment under the Criminal Justice Act, 18 USC & 3006A.

Respectfully submitted,

Walter C. Kurtz
Attorney for Respondent
Room 509
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Nashville, TN 37201
(615) 259-6163

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CERTIFICATE OF SERVICE

Comes the respondent's attorney, Walter C. Kurtz, pursuant to Rule 28(5) of the Rules of the Supreme Court of the United States, and states that he served copies of the respondent's motion to proceed in forma pauperis and the brief of respondent in opposition to the petition for writ of certiorari filed in this case on opposing counsel, John F. Southworth, Jr., Assistant Attorney General of the State of Tennessee, 450 James Robertson Parkway, Nashville, TN 37219, by depositing them in the United States mail with first class postage prepaid on this the 29 day of Sept, 1982. All parties required to be served have been served.

Walter Kurtz

WALTER C. KURTZ

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RULE 28(2) STATEMENT OF FILING

Comes respondent's attorney and makes oath that he deposited in the United States mail on the 29 day of Sept, 1982, the enclosed motion of respondent to proceed in forma pauperis, brief of respondent in opposition to the petition for writ of certiorari and certificate of service properly addressed to the Clerk of this Court with first class postage prepaid within the time allowed for filing.

Walter C. Kurtz

WALTER C. KURTZ

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Sworn to and subscribed before me on this the 29th day of Sept., 1982.

Jane Z Kibbe

NOTARY PUBLIC

My commission expires 10-17-82.